

IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

GIFT TAX REFERENCE No 3 of 1983

For Approval and Signature:

Hon'ble MR.JUSTICE R.K.ABICHANDANI and
MR.JUSTICE A.R.DAVE

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1. Whether Reporters of Local Papers may be allowed to see the judgements? Yes
2. To be referred to the Reporter or not? Yes
3. Whether Their Lordships wish to see the fair copy of the judgement? No
4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder? No
5. Whether it is to be circulated to the Civil Judge?

No

COMMISSIONER OF GIFT TAX

Versus

WESTERN INDIA INDUSTRIES

Appearance:

MR BB NAIK, Advocate, for MR MANISH R BHATT for Petitioner
Respondent served

CORAM : MR.JUSTICE R.K.ABICHANDANI and
MR.JUSTICE A.R.DAVE

Date of decision: 27/01/98

ORAL JUDGEMENT (per Abichandani, J.)

The Income Tax Appellate Tribunal, Ahmedabad, has referred the following question for our opinion under Section 26(1) of the Gift-tax Act, 1958 (hereinafter referred to as 'the said Act'):-

"Whether, on the facts and in the circumstances of the case, the Tribunal was right in law in

coming to the conclusion that the amount of Rs. 55,000/- donated by the assessee to the G.P.C.C. was not liable to gift-tax under sec. 5(1)(xiv) of the Gift-tax Act, 1958?"

The assessee filed his Return of Gift in respect of the Assessment Year 1967-68 on 15th May 1973 declaring therein "nil" gift. However, in Annexure 'D' of Part-II of the Return of Gift it was mentioned that a donation of Rs. 55,000/- was made by the assessee to the Gujarat Pradesh Congress Committee, Ahmedabad, for its election fund, which, according to the assessee, was exempt under sec. 5(1)(xiv) of the said Act.

The assessee was doing business of running of solvent extraction plant and its products of de-oil cake were being exported. According to the assessee, the donation was made during the course of business and for the purpose of business inasmuch as, by such donation, goodwill of the said political party could be secured so that policies favourable to the assessee may result in the event of the party coming into power. The Gift-tax Officer, by his order dated 29th March 1979, rejected the assessee's claim holding that such donation or contribution to political parties was a taxable gift as it was not made for the purpose of business and could be considered to be merely voluntary payments made without consideration for money or money's worth. In the appeal filed by the assessee, the Appellate Assistant Commissioner dismissed the appeal holding that the connection between the donation and conduct of the business of the assessee was too remote and did not fall within the scope of the provisions of Sec. 5(1)(xiv) of the Act. The further appeal filed by the assessee before the Income Tax Appellate Tribunal was, however, allowed by the Tribunal holding that the donation made by the assessee was a gift in the course of business and that the contribution was for the purpose of the assessee's business. Relying upon the circular of the CBDT No. 1-GT dated 5.1.1960 and the decisions of the Supreme Court in C.G.T. v. P. Gheevarghese 83 ITR 403 and C.G.T. v. Dr. George Kuruvilla 77 ITR 746, the Tribunal found that the amount of Rs. 55,000/- donated by the assessee to the G.P.C.C. was not liable to gift tax under sec. 5(1)(xiv) of the said Act.

Section 5(1)(xiv) of the said Act which falls for our consideration reads as under:-

"5(1) Gift-tax shall not be charged under this Act in respect of gifts made by any person-

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(xiv) in the course of carrying on a business,
profession or vocation, to the extent to which
the gift is proved to the satisfaction of the
Gift-tax Officer to have been made bona fide for
the purpose of such business, profession or
vocation:

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The assessee's case has been that the said amount was
donated to the said political party for its election
funds so that when the party comes into power it can
frame its policies in a manner that would further the
interests of the assessee.

"Gift" as defined in Sec. 2(xii) of the said Act
means "transfer by one person to another of any existing
movable or immovable property made voluntarily and
without consideration in money or money's worth and
includes the transfer or conversion of any property
referred to in Sec. 4, deemed to be a gift under that
section." Therefore, when the assessee claimed that the
said amount was given by way of gift, it obviously was
given to the said political party voluntarily and without
consideration in money or money's worth for the purpose
of its election funds. The question, therefore, is
whether it can be said that such an amount given for
augmenting the election funds of a political party
voluntarily and without consideration be said to be a
gift made bonafide for the purpose of the assessee's
business of exporting of de-oiled cakes. Apart from the
question whether funding of a political party with a view
to gain benefits when it comes to power would involve a
serious moral issue as it verges on bribery, we are
required to decide the issue in context of the provision
of sec. 5(1)(xiv) which clearly speaks of a gift made
bonafide for the purpose of the assessee's business. It,
therefore, clearly excludes any gift which is not made
bonafide for the purpose of business but is made with an
oblique motive which cannot be said to be an act done for
the purpose of the business of the assessee bonafide.
When an election fund is augmented by giving such
donation to a political party, it does not by itself
ensure that the political party which receives the
donation will come to power. Even after it comes to
power, there is no guarantee that those who are elected
and form the government will remain under a feeling of

obligation and will show undue benefits to the assessee who had contributed to the funds. There cannot be any assumption that the elected representatives will act irresponsibly by showing undue favours to the assesseees who had helped them by contributing funds. In a country where rule of law prevails, one cannot act on an assumption that the policies of the government will be guided by such irrelevant and personal motives of reimbursing the assesseees, who may have contributed to the funds of the ruling party, by framing policies that may suit them. There is a distinction between a government and a political party. Even when a political party is in power, that distinction remains. Furthermore, one is not sure as to whether the political party which is given donation will alone come to power or whether more than one political parties will jointly come to power. It is, therefore, obvious that not only such gifts made to political parties with a view to earn favours if and when they come to power are not gifts made bonafide for the purpose of business but they are too remote so far as the purposes of the business of the assessee are concerned. The assessee does not deal in business of rearing political parties but deals in business of exporting de-oiled cakes. Such gifts, therefore, cannot be said to have been made bonafide for the purpose of the business of the assessee which was of exporting de-oiled cakes. There should be a reasonable nexus between the giving of the gift and the business which the assessee is carrying on. Then only it can be said that the gift is given for the purpose of the business. In the present case there was no integral relation between the making of the gift nor was the gift made bonafide for the purpose of the assessee's business. In our opinion, therefore, the Tribunal committed an error in holding that the amount of Rs. 55,000/- donated by the assessee to the G.P.C.C. was not liable to the gift tax under sec. 5(1)(xiv) of the said Act.

The Tribunal, in our view, wrongly relied upon the circular dated 5.1.1960 which read as under:-

"The Board is advised that in cases where a gift is made to a political party is made by a company under the authority of a specific clause in the memorandum and articles of association of the company, the gift has to be held as having been made in the course of carrying on the business of the company and exempted from gift-tax."

It is observed that the said circular was prompted by the decision of the Bombay High Court in Jayantilal R.

Koticha v. Tata Iron and Steel Co. Ltd. (1956) 27 Company Cases 604 = 59 BLR 738) in which it was observed that "if an individual can contribute to the political funds of a party, in law it is difficult to understand how a company can be prevented from doing so." The Tribunal relied on the observation made by the Bombay High Court in the said case to the effect that the contribution of funds to a political party would enable the company to perform its functions more efficiently. On the basis of that observation, the Tribunal held that the contribution to the G.P.C.C. was not liable to gift-tax.

In Jayantilal's case (supra) the Bombay High Court was concerned with the provisions of sec. 17(1)(a) of the Companies Act, 1956. In a petition filed by the company for confirmation by the High Court under the said provision of an alteration of the company's objects proposed to be effected by a special resolution of the company, the company sought to substitute a provision in the memorandum which enabled it to subscribe or contribute or otherwise to assist among others a political party. Under sec. 17(1) of the Companies Act, a company may, by special resolution, alter the provisions of its memorandum with respect to all the objects of the company so far as may be required to enable it to carry on its business more economically or more efficiently. It is in this context that the Bombay High Court held that there was nothing in law which prohibited any contribution being made to the political funds of a party by a company. This observation can never be extended to provisions of sec. 5(1)(xiv) of the said Act relating to exemption of gift tax in respect of the gifts made bonafide for the purpose of business of the assessee where the donation is made with an oblique motive of securing benefits, should an uncertain event of that political party coming to power occur. The context in which Jayantilal's case was decided being entirely different, its ratio will not apply, by ignoring the provisions of the said Act, to the donations made to political parties where tax exemption is claimed under a specific provision of Sec. 5(1)(xiv) which alone will govern the field. The Circular dated 5.1.1960 referred to by the Tribunal has been issued in context of the decision of the Bombay High Court in Jayantilal's case and in view of what we have said on the provisions of sec. 5(1)(xiv) of the Act, it cannot assist the assessee whose donation to the G.P.C.C., as held by us, cannot be said to have been made bonafide for the purpose of business.

Reliance by the Tribunal on the decisions of the Supreme Court in Gheevarghese (supra) and Kuruvilla (supra) for the purpose of upholding the assessee's contention is totally unwarranted. In Gheevarghese's case, the assessee who was the sole proprietor of a business, converted it into a partnership by a deed dated 1.8.1963 which partnership consisted of the assessee and his two daughters. All the assets of the proprietary business were transferred to the partnership and in these assets the assessee and his daughters were entitled to shares in proportion to their share capital. The profits and losses were, however, to be divided in equal shares between the partners. The assessee filed return for the A.Y. 1964-65 showing a gift of Rs. 50,000/- in favour of his daughters representing the share capital contributed by them. The Gift-tax Officer held that, in addition, the assessee had gifted one-third share each in the goodwill of his business to his daughters. According to the Tribunal, the gift was only of one-eighth share in the goodwill, but the gift to the daughters was exempt under sec. 5(1)(xiv) of the Act on the ground that the assessee was actually carrying on the business when he admitted his two daughters into it and the main intention of the assessee was to ensure continuity of the business and to prevent its extinction on his death. It is in this context that the Hon'ble Supreme Court held that the fact that the donor made a gift while he was running the business was not sufficient to bring the gift within the exemption under clause (xiv) of sec. 5(1) of the Act. It had further to be established that there was some integral connection or relation between the making of the gift and the carrying on of the business and the object in making the gift or the design or intention behind it had to be related to the business. We fail to understand as to how the Tribunal has placed reliance on the ratio of this decision in para 4 of its judgment. The decision, in fact, reinforces what we have said on the aspect of the gift having connection with the carrying on of the business. In Kuruvilla's case (supra) the Hon'ble Supreme Court, in the background of the facts where a medical practitioner, by a deed of gift, made to his son, inter alia, of a hospital and certain adjoining land, claimed exemption under sec. 5(1)(xiv) of the said Act, held that the gift was not exempt from tax under the said provision. It was held that the clause does not enact that any gift made by a person carrying on any business is exempt from tax, nor does it provide that a gift is exempt from tax merely because the property is used for the purpose for which it was used by the donor. The ratio of this decision also fortifies the conclusion that

In view of what we have said above, the question referred to us by the Tribunal is answered in the negative in favour of the revenue and against the assessee. Rule is made absolute accordingly with no order as to costs.

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